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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/606,414

06/26/2003

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02811-P0005C

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01/08/2008

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EXAMINER

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ART UNIT

PAPER NUMBER

2836

MAIL DATE

DELIVERY MODE

01/08/2008

PAPER

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/606,414
Filing Date: June 26, 2003
Appellant(s): D'AGOSTA, RALPH

Wesley W. Whitmyer, Jr.
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 7/17/2007 appealing from the Office action mailed 4/17/2007.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

2,861,170	Rodriguez	11-1958
4,947,025	Alston et al.	8-1990
6,628,894	Winter et al.	9-2003
4,974,551	Nelson	12-1990
5,853,553	Twigg	12-1998

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1 and 4-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rodriguez in view of Alston et al. (4,947,025).

Rodriguez discloses a portable water heating system, comprising a housing (15), a water inlet (29) disposed on the outside of the housing, a first hose nipple (29b) adapted to connect a water supply (23), a lining adapted to protect the inside of the housing from corrosion (Col. 2, lines 4-5), a heating element (17), a water outlet disposed on the outside of the housing and a second hose nipple (29d) attached to the water outlet. Rodriguez further discloses use of a thermostat (66), but actually relies

upon the thermostat as a high temperature shutoff element, which shuts-off the heating circuit (30) when the temperature rises to a predetermined point. In the broad sense and especially since the claim language is considered to be broad, since thermostat (66) has a predetermined point for shut-off, this could reasonably be interpreted as being adjustable. However, it appears intended for high temperature shut-off and not for adjusting a water temperature level during use of the product. On the other hand, Alston et al. teach the use of thermostatic control (44) for controlling the current applied to the heating element (30). It would have been obvious to incorporate the teachings of Alston et al. as a means to offer the ability to adjust the temperature of the water in accordance with the desires of the consumer, for the changing seasons of the weather and as a means to increase design application. This in no manner takes away from a water-regulating valve, but rather complements the valve and adds a further degree of choice and safety to the design. As an example, the typical residence of a consumer often incorporates a tank water heater, which utilizes an adjustable thermostat and in most cases, especially wherein children are part of the household, the thermostat is set so that the hot water from a faucet (no mixing with cold) will not scald the children. Even with such a set-up, the water is regulated or mixed (hot with cold) at the faucet at varying degrees depending upon application, i.e. drinking or taking a bath etc.... See Fig.s 1, 2 and Col. 2, line 62 thru Col. 3, line 42. Rodriguez discloses that the device is supported by pipe (23) and does not appear to disclose the use of wheels, handle or mounting interface. However, Alston et al. teach the use of wheels (Claim 4) and handle (Claims 5, 6). It would have been obvious to incorporate the teachings of Alston et al. as a means to offer ease in moving the portable water heater from location to location.

Claims 3, 7, 8 and 12-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rodriguez in view of Alston et al. and further in view of Winter et al. (6,628,894).

Claim 7 adds a mounting element interface for securing the system to a mounting element when not in use. Winter et al. teach a portable water heating system wherein brackets allow for wall mounting. Therefore, it is the opinion of the Examiner, that since the device is portable, and teaches brackets for wall mounting, it would have been obvious to utilize a mounting element interface for storage of the portable device when not in use, such as on a wall, thereby offering a storage place, for example, in a consumer's garage and wherein the device would not be subject to being kicked around or bumped by other items stored on the floor. This would lead to a longer lasting device.

Claims 3 and 12 are drawn to the use of ground fault protection and high temperature shut-off. Rodriguez discloses use of a thermostat (66), but actually relies upon the thermostat as a high temperature shutoff element, which shuts-off the heating circuit (30) when the temperature rises to a predetermined point. Alston et al. teach the use of thermostatic control, supra. It would have been obvious to incorporate the teachings of Alston et al. as a means to offer the ability to adjust the temperature of the water in accordance with the desires of the consumer, for the changing seasons of the weather and as a means to increase design application. See Fig.s 1, 2 and Col. 2, line 62 thru Col. 3, line 42. Winter et al. teach the use of ground fault protection. See Column 3, lines 21-30, wherein it is suggested that ground fault protection is considered to be excellent safety practice. Ground fault protection is known in the art to be provided in those environments (i.e. bathrooms) wherein water

usage and exposure by the consumer along with electrical devices are in close proximity. However, not all locations wherein a portable electrical device is utilized offer GFCI outlets. Therefore, it would have been obvious to incorporate the teachings of Winter et al. as a means to enhance safety to the consumer and increasing applications to more hostile environments, while ensuring safety for the user, by incorporating GFCI technology within the portable device. Ground fault circuit breakers (GFCIs) are, in the barest sense, composed of a first ground fault device, the detector and a second ground fault device, the interrupter and the interrupter would obviously be placed near the incoming source of power, so as to isolated the incoming power from the remaining portable device, thereby further increasing safety to a consumer. Alston et al. teach the use of wheels (CL. 14) and use of a handle (Cls.15 & 16), see Figure 1. It would have been obvious to include these teachings as a means to help move the portable device of Rodriguez around to other locations, especially when the tank was full of water. This would appeal to the consumer and increase sales.

Claims 9-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rodriguez in view of Nelson (4,974,551) and Twigg (5,853,553).

These set of claims are drawn to use of a double-walled housing and use of an anode. Nelson teaches the use of double-walls in a water heating system (see Fig. 8 and Col. 13, lines 34 et seq.). It would have been obvious to incorporate the teachings of Nelson as a means to offer more durability to the design by protection to the interior tank, but also to offer a means to help keep the water in the tank warm longer by insulating the tank from the outside environment, thereby increasing efficiency of the system. Twigg teaches that it is known to use an anode within a hot water tank in

order to prevent corrosion. Therefore, it would have been obvious to incorporate the teachings of Twigg as a means to help prevent corrosion of the components coming in contact with the water, thereby increasing the longevity of the overall device.

(10) Response to Argument

Addressing : (vii) Argument

Claim 1

Appellant offers a description of Claim 1 to include a portable water heating system having a housing adapted to directly hold water and to transport water stored therein ... a heating element ... and an adjustable thermostatic control controlling the output of the heating element. Appellant argues that Rodriguez et al. are “directed to a water heating attachment for cold water pipes that is fixed to a pipe for support, and thus, is not adapted to store and transport water to a desired location.” The Examiner disagrees with the statement drawn to Rodriguez et al.. Appellant clearly recognizes, in Appellant’s next statement, that Rodriguez et al. disclose a tank capable of holding two-gallons of water. Two gallons of water cannot be considered unreasonable for transport, and thus, the design is considered to be “*adapted to be portable to store and transport water received therein*”. Furthermore, Column 1, lines 19-39 strongly suggest desired portability; from Rodriguez et al., “The attachment of the invention is useful not only in certain types of bathrooms but also in camps, hunting and fishing lodges, in country homes and wherever hot water is needed but a high installation cost is to be avoided.”

Appellant further argues that the water heating apparatus of Rodriguez et al. “is not adapted to transport water held within its tank” and “is only intended to be used

to heat and dispense water when it is so fixed to a cold water pipe, for instance, the supply pipe of a shower.”. The claim language “adapted to” does not impart a positive limitation upon an element, but only requires that the element has the ability to so perform. Therefore, a two gallon heating water tank, such as taught by Rodriguez et al., is adapted to be portable to store and transport water to a desired location, whether or not it is supported by a cold water pipe when connected at a specific location, i.e. at camps, hunting and fishing lodges, in country homes and wherever hot water is needed but a high installation cost is to be avoided.

Appellant refers to and makes various statements concerning Rodriguez et al. in an attempt to illustrate that the teachings of Rodriguez et al. actually teach away from the instant claim language. For example, Appellant state that an objective of Rodriguez et al. is to simplify construction so that a single valve will operate the water and control the temperature of the water. Another stated objective of Rodriguez et al. is to provide a simplified electrical control for an electric water heater and “the ability to mix hot and cold water is an important feature of my (Rodriguez et al.) invention”. Rodriguez et al. disclose a thermostat (66) is a safety device which acts automatically to open the circuit of the heating coil (30) whenever the temperature of the valve rises to a predetermined point”.

Appellant next refers to and makes statements concerning Alston et al. in an attempt to illustrate that the Reference teaches away from the instant claim language. For example, “The rheostat (44) enables water of different temperature levels to be dispensed by the water heater.” and “Alston expressly teaches that the benefit of its system is that it is light do to the fact that “no water is stored within the coiled water conducting tube during periods of non-use.”.

Appellant then tries to establish the point that each reference has some feature or features that teach away from the instant claim language; and thus, one would not be motivated to combine the teachings because both references teach away from the combination and such a combination would defeat the purposes of both references. Appellant state that “it is improper to reject a claim as obvious over a prior art reference when the modification would render the prior art unsatisfactory for its intended purpose. *In re Gordon*, 733 F.2d 900, 221 USPQ 1125 (Fed. Cir. 1984); MPEP 2143.01”. At this point, the above arguments end in the middle of Page 10 of the instant Brief and the Examiner will address them before moving on to the remaining arguments.

As discussed above, the claim language “adapted to” does not impart a positive limitation upon an element, but only requires that the element has the ability to so perform. Therefore, a two gallon heating water tank, such as taught by Rodriguez et al., is adapted to be portable to store and transport water to a desired location, whether or not it is supported by a cold water pipe when connected at a specific location, i.e. at camps, hunting and fishing lodges, in country homes and wherever hot water is needed but a high installation cost is to be avoided. A simplified construction is a desirable trait of any design as a means to keep manufacturing costs down, but does not in any manner translate to a teaching away from any obvious modification resulting from a teaching from another reference. Utilization of a single valve to adjust the water temperature offers convenience to the user, but does not teach away from incorporating the teaching of an adjustable thermostatic control. Nor does having a thermostat (66) safety device, which acts automatically to open the circuit of the heating coil (30) whenever the temperature of the valve rises to a predetermined point

teach away from incorporating an adjustable thermostatic control (Alston et al.) and one of ordinary skill would have looked to any reference pertaining to water heating for adjustable temperature control, even one that does not teach the adaptation to store and transport water, as such a feature is not critical to adjustable temperature control, but more importantly, such a feature does not cause the reference to teach away from its adjustable temperature feature. It appears that Appellant may be trying to imply a physical bodily incorporation of the Alston et al. Reference into the disclosure of Rodriguez et al.. Furthermore, incorporating an adjustable temperature control in addition to a single valve water controller does not render the prior art (Rodriguez et al.) unsatisfactory for its intended purpose.

The portable water heater of Rodriguez et al. have a single valve utilized by the consumer so as to be able to turn the water "on" or turn the water "off" and/or mix hot and cold water to a desired temperature. Rodriguez et al. disclose a thermostat (66) safety device, which acts automatically to open the circuit of the heating coil (30) whenever the temperature of the valve rises to a predetermined point. Alston et al. teach the use of thermostatic control (44) for controlling the current applied to the heating element (30). It would have been obvious to incorporate the teachings of Alston et al. as a means to offer the ability to adjust the temperature of the water in accordance with the desires of the consumer, for the changing seasons of the weather and as a means to increase design application. This in no manner takes away from a water-regulating valve, but rather complements the valve and adds a further degree of choice and safety to the design. As an example, the typical residence of a consumer often incorporates a tank water heater, which utilizes an adjustable thermostat and in most cases, especially wherein children are part of the household, the thermostat is

set so that the hot water from a faucet (no mixing with cold) will not scald the children. Even with such a set-up, the water is regulated or mixed (hot with cold) at the faucet at varying degrees depending upon application, i.e. drinking or taking a bath etc....

Alston et al. teach the use of thermostatic control (44) for controlling the current applied to the heating element (30); the valve of Rodriguez would still be used for adjusting the temperature of the water being used by the specific person at the time. Additional motivation for incorporation of an adjustable thermostat, as fairly taught by Alston et al., is that it would have been obvious for allowing a quick heating of the water in the tank, when increased usage by many persons has been anticipated. There would result in less time waiting for the water to heat up. Also, safety is often a high priority in an engineered product, the teachings of an adjustable thermostat would have been obvious as a means to avoid scalding of younger children should they accidentally turned on the valve of Rodriguez to the purely "hot" setting. Therefore, the application of the teachings of Alston et al. to that of Rodriguez do not take away from the objective of Rodriguez. Arguments that Alston et al. teach a tankless water heater, being of light weight and etc... have no probative value whatsoever, since the teachings of tankless and lightweight were not relied upon and one would be motivated to look to any portable water/medium heating apparatus for teachings, not just those which utilize a housing adapted to be portable to store and transport water received therein.

Appellant argues from the last paragraph on Page 10 thru Page 11 of the Brief, basically that one would not apply the adjustable temperature control of Alston et al. to Rodriguez et al., as Rodriguez et al. teach a simplified construction with a single

valve and a simplified electrical control for an electric water heater. Again the incorporation of the adjustable thermostatic control of Alston et al. would not de-simplify the single valve and as seen in Alston et al., Figure 1a, the adjustable thermostatic control (44) comprises an easily turned knob; this certainly would not de-simplify electrical control for an electric water heater to a consumer and it definitely would not defeat the purpose of Rodriguez et al. by providing a portable water heater with a single valve to control water flow, but would rather increase the degree of safety; supra.


On page 12, Appellant appears to argue the incorporation of Rodriguez et al. into the disclosure of Alston et al., however, the Examiner was relying upon the teachings of an adjustable thermostatic control from Alston et al. and apply such a teaching to Rodriguez et al., therefore, such an argument has no merit. Appellant essentially then argues that it is uncertain what combination would result, if any combination would in fact be made and that such a combination would not be obvious because any combination would change the principle of operation of both references. The Examiner has not proposed bodily incorporation of the two references and incorporating the adjustable thermostatic control from Alston et al. would not change the principle of operation of Rodriguez et al., but rather offer an additional degree of safety to the design.

Page 13 of the instant Appeal Brief basically states that Claims 3-17 are patentable for the same reasons discussed above with respect to Claim 1 and is otherwise silent with respect to those claims. Since the Examiner disagrees with Appellants arguments drawn to the patentability of Claim 1, the Examiner can only disagree with the patentability of Claims 3-17 for the same reasons proffered, supra.

Art Unit: 2836

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,


Ronald W. Leja
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Art Unit 2836

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